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IN THE
**Supreme Court of
The United States**

OCTOBER TERM, 1976

No. 76-796

MISSISSIPPI POWER & LIGHT COMPANY,
Petitioner

v.

UNITED GAS PIPE LINE COMPANY,
PENNZOIL COMPANY,
Respondents

STATE OF MISSISSIPPI,
Plaintiff-Intervenor

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

**BRIEF OF RESPONDENT PENNZOIL COMPANY
IN OPPOSITION**

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OPINIONS BELOW AND JURISDICTION

The opinions below are correctly referenced and the jurisdictional prerequisites are adequately set forth in the petition for a writ of certiorari.

QUESTION PRESENTED

Whether the Federal Power Commission, which has exclusive jurisdiction over curtailments of deliveries of natural gas transported in interstate commerce and which has ordered the implementation of tariff provisions to govern curtailments by an interstate pipeline, has primary

jurisdiction to decide complex issues raised in an action by a customer of the interstate pipeline for damages allegedly resulting from such curtailments.

STATUTES INVOLVED

The following provisions of the Natural Gas Act, 15 U.S.C. §§ 717, *et seq.*, are involved in this proceeding:

Section 1(b), 15 U.S.C. § 717(b)
 Section 4, 15 U.S.C. § 717e
 Section 5, 15 U.S.C. § 717d
 Sections 7(e) and (e), 15 U.S.C. §§ 717f(e) and (e)
 Section 16, 15 U.S.C. § 717o.

These provisions are set forth in Appendix A hereto.

STATEMENT OF THE CASE

This case arose as a direct result of the nationwide shortage of natural gas available for delivery in interstate commerce.¹ Respondent United Gas Pipe Line Company (United), which until March 1974 was a wholly owned subsidiary of Respondent Pennzoil Company (Pennzoil), is one of several major interstate pipelines which have been forced to curtail deliveries of gas as a result of the shortage. United has been selling gas to Petitioner Mississippi Power and Light Company (MP&L) since 1958, and the sale is currently being made under a contract executed in 1967. By this action, MP&L seeks damages allegedly resulting from the curtailment of deliveries by United.

The gas which United sells to MP&L is transported in interstate commerce and is therefore subject to the jurisdiction of the Federal Power Commission (FPC).² Consequently, United's service to MP&L can be rendered only pursuant to authorization of and under the conditions

imposed by the FPC.³ The certificates of public convenience and necessity authorizing the service were issued by the FPC in 1958 and 1965 and were amended in 1970.⁴ The certificates are conditioned upon compliance with all applicable FPC regulations under the Natural Gas Act (Act). Likewise, the 1967 contract between United and MP&L was made subject to all present or future valid rules, regulations or orders of any regulatory body having jurisdiction.

Since 1952, United's tariff on file with the FPC has contained a provision which governs curtailments during times of natural gas shortage. That provision, which is Section 12.1 of United's tariff, sets forth the priorities in which the customers of United will be curtailed. In addition, Section 12.1 provides, and has always provided, that United's curtailments shall be made without liability to its customers.

Since the onset of the gas shortage in the fall of 1970, United has curtailed its customers, including MP&L, pursuant to the terms of United's curtailment tariff. The provisions of that tariff have been under active and continuous consideration by the FPC. In the fall of 1970, United filed with the FPC a petition for declaratory order that United's curtailment program was in accord with its tariff and its direct sale contracts on file with the FPC.⁵ That proceeding has been expanded to include consideration of the curtailment programs for subsequent periods. Further, in April 1971 the FPC ordered United and other interstate pipeline companies to file new tariff sheets setting forth curtailment provisions.⁶ United complied with that

¹ Natural Gas Act, Sections 7(e) and (e), 15 U.S.C. §§ 717f(e) and (e).

² Service to MP&L's Rex Brown plant was authorized in *United Gas Pipe Line Co.*, Docket No. G-13646, 19 FPC 387 (1958). Service to MP&L's Baxter Wilson plant was authorized in *United Gas Pipe Line Co.*, Docket No. CP65-495, 34 FPC 1063 (1965). These certificates were amended in *United Gas Pipe Line Co.*, Docket No. CP70-222, 44 FPC 14 (1970).

³ *United Gas Pipe Line Co.*, Docket No. RP71-29.

⁴ Order No. 431, Docket No. R-418, 45 FPC 570 (1971).

¹ The gas shortage has been judicially recognized and dealt with by the courts on numerous occasions. See, e.g., *FPC v. Louisiana Power & Light Co.*, 406 U.S. 621 (1972).

² Natural Gas Act, Section 1(b), 15 U.S.C. § 717(b).

order on May 17, 1971. On July 2, 1971, the FPC ordered United to enforce the terms and provisions of the curtailment program as set forth in United's tariff.⁷ In addition, in the ongoing curtailment proceedings, the FPC has on several occasions revised the order of curtailment priorities under United's tariff.⁸ The "without liability" language of Section 12.1 has remained unchanged.

In reviewing the FPC's treatment of United's curtailment program, the courts have addressed the exculpatory tariff issue. In *State of Louisiana v. FPC*, 503 F.2d 844 (5th Cir. 1974), the court considered a proposed Section 12.3 of United's tariff, which the Court read quite broadly to absolve United of any liability for the excess cost of substitute fuels used in lieu of curtailed gas volumes. The broader exculpatory language of Section 12.1 was not before the Court. Nonetheless, the Court directed the FPC to address the following question on remand:

Can a tariff provision remove general contractual liability? *Id.* at 867.

In response to this directive, the FPC has instituted a separate proceeding to consider this and related other questions.⁹

⁷ *United Gas Pipe Line Co.*, Docket No. RP71-29, et al., Order Authorizing and Directing Interim Enforcement of Curtailment Program Pending Final Determination Of Issues, 46 FPC 21 (July 2, 1971).

⁸ See *United Gas Pipe Line Co.*, Docket No. RP71-29, et al., Opinion No. 606, 46 FPC 786 (1971) and Opinion No. 606-A, 46 FPC 1290 (1971); *United Gas Pipe Line Co.*, Docket No. RP71-29, et al., Opinion No. 647, 49 FPC 179 (1973) and Opinion No. 647-A, 49 FPC 1211 (1973). Opinion Nos. 606 and 606-A were reviewed and remanded for further proceedings in *International Paper Co. v. FPC*, 476 F.2d 121 (5th Cir. 1973). Opinion Nos. 647 and 647-A were reviewed and remanded for further proceedings in *State of Louisiana v. FPC*, 503 F.2d 804 (5th Cir. 1974).

⁹ *United Gas Pipe Line Co.*, Docket Nos. RP71-29, et al. [Orders issued May 2, 1975 (appendix B to United's brief in opposition to MP&L's petition for a writ of certiorari) and August 20, 1975 (appendix E to United's brief in opposition)]. The FPC has

Prior to filing its damage action, MP&L had been a party to the curtailment proceedings before the FPC for more than four years. During that time MP&L had never challenged the "without liability" language of Section 12.1 of United's curtailment tariff. Nonetheless, alleging breach of contract, misrepresentation of capability to transport and sell gas, and conspiracy to reduce or discontinue the sale, MP&L now seeks damages in excess of \$160 million allegedly resulting from curtailments of deliveries. MP&L does not allege that the curtailments have been imposed in a manner inconsistent with United's curtailment tariff. Against Pennzoil, MP&L alleges tortious interference with MP&L's contractual rights with United.

By separate motions, both United and Pennzoil requested the District Court to dismiss, or, in the alternative, to stay, MP&L's damage action on the ground that the FPC has primary jurisdiction over a number of complex issues raised by that action. On April 2, 1975, the District Court denied the motions to dismiss, but granted the motions to stay pending the FPC's exercise of its primary jurisdiction. On appeal pursuant to 28 U.S.C. §1292(b), the United States Court of Appeals for the Fifth Circuit affirmed the lower court's stay order, discussed five areas in which the opinion of the FPC would be of significant aid, and directed the District Court to specify in its referral order the issues upon which the FPC's opinion was sought. MP&L's petition for a writ of certiorari followed.

ARGUMENT

Each of the reasons set forth by MP&L in support of its request for a writ of certiorari attacks the propriety of the application of the primary jurisdiction doctrine under the facts of this case. Thus, MP&L asserts that the Court of

under consideration a request for clarification of the scope of that proceeding, but has deferred ruling on that request pending the referral order in this case. *United Gas Pipe Line Co.*, Docket Nos. RP71-29, et al. (Phase III) (Order issued July 19, 1975) (Appendix F to United's brief in opposition).

Appeals decision is in conflict with this Court's decision in *Nader v. Allegheny Airlines, Inc.*, 96 S. Ct. 1978 (1976), that the Court of Appeals decision has departed from the accepted and usual course of judicial proceedings to an extent which requires an exercise of this Court's power of supervision, and that the stay is an abuse of discretion. The substance of MP&L's position, then, is that the Court of Appeals erred in applying the primary jurisdiction doctrine.

In fact, however, application of the primary jurisdiction doctrine in this case is essential in order to achieve the consistency of regulation required under the Natural Gas Act and in order to obtain the benefit of the FPC's expertise in matters which Congress has entrusted to that agency. Neither the *Nader* case nor any of the other authorities upon which MP&L relies requires a different result.

I.

THE COURT OF APPEALS DECISION DOES NOT CONFLICT WITH NADER.

MP&L's reliance on the *Nader* case, which is this Court's most recent decision dealing with the primary jurisdiction doctrine, is misplaced. Not only is the Court of Appeals decision not in conflict with *Nader*, but in fact this Court's discussion of the primary jurisdiction doctrine in *Nader* establishes the propriety of applying that doctrine in this case.

In *Nader*, an airline passenger, whose confirmed reservation was not honored because more reservations than could be accommodated had been taken, sought damages based on the common law tort of fraudulent misrepresentation. Noting that there was no factual dispute, this Court held that the fraudulent misrepresentation claim need not be referred to the regulatory agency having jurisdiction over the airline involved prior to adjudication in the court. In

so holding, the Court was careful to point out that the plaintiff's claim was not based on breach of contract in failing to honor the reservation, but instead was based on the airline's failure to disclose its practice of overbooking.¹⁰ Thus, in summarizing the relationship between the claim and the regulations of the regulatory body there involved, the Court stated:

Petitioner seeks damages for respondent's failure to disclose its overbooking practices. He makes no challenge to any provision in the [airline's] tariff, and indeed there is no tariff provision or Board regulation applicable to disclosure practices. Petitioner also makes no challenge, comparable to those made in *Southwestern Sugar & Molasses Co. v. River Terminal Corp.*, *supra* and *Lichten v. Eastern Airlines, Inc.*, 189 F.2d 939 (C.A. 2 1951), to limitations on common-law damages imposed through exculpatory clauses included in a tariff. 96 S. Ct. at 1987.

In this case, however, United's tariff provides that curtailments will be made without liability. By seeking damages for curtailments, MP&L is therefore directly challenging this tariff provision. *Nader* leaves no doubt as to the propriety of applying the primary jurisdiction doctrine when such a challenge is made:

The doctrine has been applied, for example, when an action otherwise within the jurisdiction of the Court raises a question of the validity of a rate or practice included in a tariff filed with an agency, e.g., *Danna v. Air France*, 463 F.2d 407 (C.A. 2 1972); *Southwestern Sugar & Molasses Co. v. River Terminals Corp.*, 360 U.S. 411, 417-418 . . . 96 S. Ct. at 1987.

Furthermore, despite MP&L's transparent attempt to bring its claim within the ambit of *Nader* by characterizing its action as one for fraudulent misrepresentation, MP&L has never plead any such claim. Rather, its claim is for breach of contract. MP&L's further statement that United

¹⁰ *Nader v. Allegheny Airlines, Inc.*, 96 S. Ct. at 1983.

misrepresented its ability to perform the contract is but another way of alleging that United did not do that which it undertook by contract to do. MP&L has not alleged that United knew at the time the contract was executed in 1967 that it would be unable to deliver the quantities of gas specified in that contract. Nor has MP&L alleged that United failed to disclose any material fact at the time the contract was executed, or that United's failure to disclose a material fact caused damage to MP&L. In short, MP&L simply has not alleged a fraudulent misrepresentation or any of the elements of actionable fraud.

Thus contrary to MP&L's assertion, the holding in *Nader* is not pertinent to this case because (1) *Nader* did not involve a challenge to an exculpatory tariff provision while this case does and (2) *Nader* involved a fraudulent misrepresentation claim while this case involves a breach of contract claim. Consequently the Court of Appeals decision is not in conflict with *Nader*. To the contrary, the discussion in *Nader* of the legitimate uses of the doctrine of primary jurisdiction confirms the propriety of applying that doctrine in this case.

II.

THE COURT OF APPEALS DECISION DOES NOT DEPART FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS

As an examination of the *Nader* opinion suggests, the Court of Appeals decision in this case is in all respects consistent with the objectives of the primary jurisdiction doctrine. The primary jurisdiction doctrine is designed to insure the proper accommodation between the respective jurisdictions of courts and regulatory agencies. It is a flexible doctrine and it should be applied when, under the facts of a particular case, the purposes of the doctrine will be served. *United States v. Western Pacific Railroad Co.*, 352 U.S. 59 (1956). The specific objectives of the doc-

trine are to insure uniformity and consistency of regulation, *Texas & Pacific Railway Co. v. Abilene Cotton Oil Co.*, 204 U.S. 426 (1907), and to obtain the benefit of the expertise of specialized regulatory bodies with respect to matters not within the conventional experience of courts. *United States v. Western Pacific Railroad Co., supra*; *Far East Conference v. United States*, 342 U.S. 570 (1952).

As the Court of Appeals determined, application of the primary jurisdiction doctrine is particularly appropriate under the facts of this case. The FPC has exclusive and broad authority to regulate the curtailment of gas deliveries by interstate pipeline companies. *FPC v. Louisiana Power & Light Co.*, 406 U.S. 621 (1972). This authority extends not only to the allocation of volumes of gas, but also to the allocation of the economic burdens of curtailment. *Mississippi Public Service Commission v. FPC*, 522 F.2d 1345 (5th Cir. 1975), cert. denied, U.S. , 97 S.Ct. 181 (1976). The FPC is and has been actively engaged in discharging these responsibilities, both in United's ongoing curtailment proceedings and in the proceeding commenced to consider the exculpatory tariff issue remanded to the FPC in *State of Louisiana*. In addition, in response to the *Mississippi Public Service Commission* decision, and at the instance of MP&L and others, the FPC is currently considering whether MP&L and other lower priority customers of United should receive payments from United's higher priority customers as compensation for the cost of replacing curtailed gas volumes with alternate fuels.

In view of the FPC's broad authority over curtailments, and its ongoing exercise of that authority, referral of this case to the FPC will serve both of the objectives of the primary jurisdiction doctrine.

**A. REFERRAL IS ESSENTIAL TO INSURE
UNIFORMITY AND CONSISTENCY OF
REGULATION.**

The "without liability" language of United's tariff is applicable to all of United's customers, yet by this action MP&L in essence seeks to rewrite that tariff to provide that curtailments shall be without liability to all of United's customers except MP&L. Such a result would destroy the uniformity of regulation required under the Natural Gas Act and would create an undue preference contrary to Section 4(b) of the Act. Consequently, MP&L's challenge to the tariff must be made in the first instance at the FPC. See *Texas and Pacific Railway Co. v. Abilene Cotton Oil Co.*, *supra*; *Lichten v. Eastern Airlines, Inc.*, 189 F.2d 939 (2d Cir. 1951).

MP&L seeks to avoid the FPC's jurisdiction by asserting that the tariff issue is one of construction of that tariff rather than its reasonableness. Whether the issue is characterized as being the construction, the validity, or the reasonableness of the tariff, however, its resolution requires an analysis of the reasons for the tariff provision. That analysis will inevitably require consideration of interests other than those of the private litigants. It will also involve public interest considerations which Congress has entrusted to the FPC. A stay of the litigation until the FPC passes on the tariff issue is essential under these circumstances. *United States v. Western Pacific Railroad Co.*, *supra*.

Indeed, as was noted in *Nader*, when a tariff provision applicable to all customers of a regulated company is challenged by an individual customer in a private damage action, the courts have consistently required preliminary resort to the regulatory body involved. This result has obtained whether the challenged tariff relates to rates as in *Abilene* and *Danna v. Air France*, 463 F.2d 407 (2d Cir. 1972) or to other terms of the regulated company's service, such as the exculpatory tariff provisions involved in *South-*

western Sugar & Molasses Co., Inc. v. River Terminals Corp., 360 U.S. 411 (1959), *Lichten*, and this case.

Moreover, the need to protect the primary jurisdiction of an agency is greatest when the issue raised is already under consideration by the agency. See *FPC v. Louisiana Power & Light Co.*, *supra*. In this case, not only is the FPC already engaged in considering the tariff issue as a result of the remand in *State of Louisiana*, but furthermore the FPC is considering other aspects of the allocation of economic burdens of curtailments issue in a proceeding initiated by MP&L. MP&L should not be heard to deny the FPC's jurisdiction to deal with the economic consequences of curtailment while at the same time invoking that jurisdiction in an effort to recover compensation for the very types of costs that form the basis for a portion of the damages MP&L seeks in this case.

**B. RESOLUTION OF THE FACTUAL ISSUES
REQUIRES APPLICATION OF THE FPC'S
EXPERTISE.**

This case involves extraordinarily complex factual issues. The basic factual issue is the cause of United's shortage. United submits that the gas shortage has resulted from a variety of factors beyond United's control. MP&L has maintained that the shortage was a result of United's deliberate or negligent misconduct. While MP&L now claims that the cause of United's shortage is not a part of this litigation,¹¹ MP&L simultaneously asserts, as it has from the outset, that United's alleged misconduct precludes application of the exculpatory tariff provision.¹² Thus the cause of United's shortage is a major factual issue underlying MP&L's action.

- Since the onset of the gas shortage, the FPC has dealt on a day to day basis with the shortage on United's system as well as with the shortages on the systems of other interstate

¹¹ MP&L's Petition at 8.

¹² MP&L's Petition at 12.

pipelines. The FPC therefore has both an intricate knowledge of United's shortage and a broad exposure to the nationwide gas shortage as a whole, neither of which the court has. And, as noted in *Michigan Consolidated Gas Co. v. Panhandle Eastern Pipe Line Co.*, 226 F.2d 60, 70 (6th Cir. 1955), cert. denied, 350 U.S. 987 (1956), claims for damages based on curtailments allegedly incurred as a result of a pipeline's misconduct involve "intricate problems of service as between different users and different geographical sections and [require] for their decision the technical understanding and expert knowledge of the Commission." The underlying factual issue in this case is not within the conventional experience of the court and the expertise of the FPC should not be bypassed. *Ricci v. Chicago Mercantile Exchange*, 409 U.S. 289 (1973); *Far East Conference v. United States*, *supra*.

III.

THE STAY ORDER IS NOT AN ABUSE OF DISCRETION.

MP&L's final reason in support of its request for a writ of certiorari is its assertion that the issuance of the stay order was an abuse of discretion. This case, however, does not involve a discretionary application of the primary jurisdiction doctrine. When, as here, the validity of a tariff provision of general applicability is challenged in a court action for damages, the tariff's validity must be passed upon in the first instance by the regulatory agency having jurisdiction. See *United States v. Western Pacific Railroad Co.*, *supra*; *Texas and Pacific Railway Co. v. Abilene Cotton Oil Co.*, *supra*.

But even assuming that the propriety of the application of primary jurisdiction is within the court's discretion in this case, that discretion has not been abused. First, as discussed above, the FPC's jurisdiction over the issues involved in this case is both broad and clear. Second, while MP&L suggests that the length of the FPC proceedings

dealing with United's curtailment program indicates that the proceedings on referral will be unreasonably lengthy, the length of the curtailment proceeding in fact serves to underscore the need for referral of the issues in this case. The curtailment proceeding has been lengthy because the issues raised by curtailment are exceedingly complex. The issues raised in MP&L's damage action are no less complex. Furthermore, as a result of the lengthy curtailment proceedings the FPC is familiar with the factual context of this litigation. The court is not. Clearly, the FPC is much better equipped expeditiously to deal with the issue than is the court.

Finally, although MP&L has been a party to United's curtailment proceedings from the beginning, it never availed itself of its undoubted right to challenge the tariff provision it has now challenged in this damage action. Any delay incident to requiring that challenge to be made in a manner consistent with the principles of the primary jurisdiction doctrine is of MP&L's own making.

CONCLUSION

For the foregoing reasons Pennzoil respectfully submits that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served three copies of Pennzoil's Brief In Opposition on counsel of record for the other parties and the Intervenor State of Mississippi by depositing copies of it in the United States Mail, postage prepaid, on January 12, 1977.

Alvin M. Owsley, Jr.

APPENDIX A

Natural Gas Act, Section 1(b), 15 U.S.C. § 717(b)

"(b) The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

Natural Gas Act, Section 4, 15 U.S.C. § 717c

"(a) All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is declared to be unlawful.

(b) No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from June 21, 1938) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices,

and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, State commission or gas distributing company, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated

after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible."

Natural Gas Act, Section 5, 15 U.S.C. § 717d

"(a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however,* That the Commission shall have no power to order any increase in any rate contained in the

currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

(b) The Commission upon its own motion, or upon the request of any State commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transportation of natural gas by a natural-gas company in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas."

Natural Gas Act, Section 7(e), 15 U.S.C. § 717f(e)

"(e) No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however,* That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on February 7, 1942, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after February

7, 1942. Pending the determination of any such application, the continuance of such operation shall be lawful.

In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however,* That the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest."

Natural Gas Act, Section 7(e), 15 U.S.C. § 717f(e)

"(e) Except in the cases governed by the provisos contained in subsection (e) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require."

Natural Gas Act, Section 16, 15 U.S.C. § 717e

"The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this chapter; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable hours."